

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRET ALAN HUMPHRIES,

Defendant.

Case No. 2:14-cr-279-APG-VCF

**REPORT & RECOMMENDATION**

MOTION TO SUPPRESS (#39)

This matter involves the United States’ prosecution of Bret Alan Humphries. (Indict. #1<sup>1</sup>). Before the court is Mr. Humphries’ Motion to Suppress (#39). The government opposed (#42); Mr. Humphries replied (#50); and both parties filed supplemental briefs (#62, #63). For the reasons stated below, the court recommends granting the motion.

**I. BACKGROUND**

On August 30, 2012, Bret Humphries sat in his living room in Las Vegas reading the news as his stepdaughter, Alyssa Hart, talked on the phone with the father of her infant daughter. *See* (Tr. #54 55:1; 88:7–8). Bret’s wife, Peggy Hart, slept in a nearby room. (*Id.* at 71: 21–22). Bret’s infant granddaughter, Nala, was also home. (*Id.* at 57). It was approximately 110 degrees outside. (*Id.* at 25:15; 39:24).

As the family relaxed inside, a S.W.A.T. team assembled around their home. The team included two armored vehicles, a K-9 unit, 16 armored officers, two detectives from the Las Vegas Metropolitan Police Department (“Metro”), a forensic analyst, an investigative specialist, a sergeant, and an ambulance—in case “a gun fight” ensued. (*Id.* at 16; 27:23 –25). The team erected two perimeters around

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<sup>1</sup> Parenthetical citations refer to the court’s docket.

1 the home. (*Id.* at 10). An inner perimeter was designated for S.W.A.T. personnel only. (*Id.*) It contained  
2 armored vehicles and S.W.A.T. officers equipped with riot shields and guns. (*Id.*) Its task was to draw the  
3 family out of the home and detain them. (*Id.*) The outer perimeter was reserved for the K-9 unit, two  
4 detectives, forensic analyst, investigative specialist, sergeant, and ambulance. (*Id.*) Their initial task was  
5 to divert foot traffic and support the S.W.A.T. team. (*Id.*)

6 When both perimeters were established, S.W.A.T. Officer Giblin activated the PA system on an  
7 armored vehicle and commenced the operation against the family: “This is Las Vegas Metropolitan Police  
8 Department S.W.A.T. Team. We have a search warrant for the residence, address 4255 North Nellis  
9 Boulevard, building 7, unit 2052. Come out with your hands up. We have a search warrant.” (*Id.* at 18:21–  
10 24). The team received no immediate response and repeated the call: “This is Las Vegas Metropolitan  
11 Police Department S.W.A.T. Team. We have a search warrant for the residence, address 4255 North Nellis  
12 Boulevard, building 7, unit 2052. Come out with your hands up. We have a search warrant.” (*Id.* at 18:24–  
13 25; 55:8).

14 Alyssa Hart looked out a nearby window and saw the team assembled below. (*Id.* at 55:5). She  
15 rushed into the living room saying, “Dad, there’s —!” (*Id.* at 55:7). But, Mr. Humphries was already  
16 outside. (*Id.* at 7–8). The front door was open and Mr. Humphries was standing alone on the balcony  
17 outside. (*Id.*) Alyssa heard the voice on the loudspeaker again, “Come out with your hands up.” (*Id.*)

18 Mr. Humphries stood on his balcony in disbelief and asked, “Are you guys sure you got the right  
19 apartment?” (*Id.* at 88:17–18). Officer Giblin ordered Mr. Humphries out of the apartment. (*Id.*) Before  
20 leaving, he turned to Alyssa and said, “Get your Mom, get Nala, and come on downstairs.” (*Id.* at 88:23–  
21 24). Alyssa woke her sleeping mother, gathered her shoes, and prepared to exit with Nala.

22 Mr. Humphries descended the stairs and saw an officer on one knee pointing “an M-16 or AR-15”  
23 at him. (*Id.* at 88:15). When he reached the bottom of the stairs, a voice on a bullhorn ordered him to turn  
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1 and walk backwards towards the S.W.A.T. team. (*Id.* at 89:1–5). He complied, walked backwards towards  
2 the voice, and had his hands zip tied behind his back. (*Id.*)

3 “What’s going on?” he asked. (*Id.*) An officer said that it would be explained later, and escorted  
4 Mr. Humphries to the rear of an armored vehicle where another S.W.A.T. officer was waiting for him.  
5 (*Id.* at 89:6–9). The second S.W.A.T. officer took Mr. Humphries to the outer perimeter and gave him to  
6 two uniformed police officers who were standing between two patrol cars. (*Id.* at 89:10–13). Mr.  
7 Humphries asked, “What’s going on?” (*Id.* at 89:16). An officer said that it would be explained later. (*Id.*)

8 Meanwhile, Alyssa, Peggy, and Nala, exited the family home. From the balcony, Alyssa saw a  
9 team of S.W.A.T. officers holding armored riot shields and a detective in a yellow jacket. (*Id.* at 56:4–7).  
10 Peggy saw guns pointed at her. (*Id.* at 72:20). They descended the stairs and were immediately separated  
11 from one another. (*Id.* at 73:4–7).

12 Peggy asked what was happening; a S.W.A.T. officer said that it would be explained later. (*Id.*)  
13 Her picture was taken and she was placed in an SUV. (*Id.*) She saw her daughter and granddaughter being  
14 escorted into another SUV on the other side of the perimeter; and then saw her husband standing with his  
15 hands zip tied behind his back a few feet away. *See (id.* at 73:8–11; 89:13). It was 110 degrees outside and  
16 his shirt was wet with sweat. (*Id.* at 31:1). Peggy began to feel discomfort and contacted an officer, telling  
17 him that she suffers from COPD, high blood pressure, and type 2 diabetes and does not cope well with the  
18 heat. (*Id.* at 31; 77:22–23).

19  
20 Approximately forty minutes passed as the S.W.A.T. team entered the home and conducted a  
21 protective sweep. The family was told that they were not under arrest but that they could not re-enter their  
22 home without permission or a police escort. When the protective sweep was complete, the S.W.A.T. team  
23 departed and Alyssa, Peggy, Nala, and Mr. Humphries were taken back inside and ordered to sit on the  
24 living room couch, which had been “torn apart” by the S.W.A.T. team. (*Id.* at 30:14; 56:21; 74:1–7).  
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1 Detective Ramirez, Detective Darr, Forensic Analyst Matt Trafford, Investigative Specialist Lisa Rowe,  
2 and Sergeant Ryan Smith then commenced the search. (*Id.* at 91: 9–25). Around this time, Mr. Humphries’  
3 zip ties were removed. (*Id.*)

4 One officer blocked the front door and another engaged the family in small talk as the rest of the  
5 team took photos and scanned various digital devices. *See (id.* at 69:11; 91:10–13). None of the family  
6 members were allowed to walk around their home freely or retreat into a room without a law enforcement  
7 officer. *See (id.* at 28:24–29:2; 69:6–8). The family was expressly confined to the couch and did not feel  
8 free to leave. *See (id.* at 29:3 –7; 58:21–23).

9 At one point, Mr. Humphries asked if he could smoke a cigar in his home. *See, e.g., (id.* at 57). He  
10 was told that he could not. (*Id.*) He asked if he could smoke a cigar outside on his balcony. (*Id.*) He was  
11 told that he could not. (*Id.*) At another point, Peggy asked if she could take her medication. (*Id.*) She was  
12 initially told, “You can’t really move right now;” but was eventually escorted into the bedroom to retrieve  
13 what she needed. (*Id.* at 58:4 –9). At another point, an extended family member stopped by to remove  
14 Nala from the apartment. (*Id.* at 57:2 –6).

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16 Then, Detective Ramirez approached the family and told Mr. Humphries that he wanted to speak  
17 with him privately. Mr. Humphries said that he “has nothing to hide, you can tell me here in front of my  
18 wife and daughter.” (*Id.* at 93:5–7). Ramirez rejected Mr. Humphries’ offer and insisted that Mr.  
19 Humphries be isolated from his family. (*Id.*) The family still did not know why their home had been  
20 intruded. (*Id.* at 93:5–10). Peggy urged her husband to go with Detective Ramirez “and find out what’s  
21 going on.” (*Id.* at 93:8–9). He complied.

22 Detective Ramirez took Mr. Humphries into a bedroom in the back of the apartment, told him to  
23 sit on the end of the bed, stood between him and the door, and began interrogating him. (*Id.* at 94). At  
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1 some point during the conversation, Detective Ramirez decided to record Mr. Humphries statements. (*Id.*)  
 2 After Detective Ramirez turned the recorder on, Mr. Humphries incriminated himself.

3 Mr. Humphries now faces charges for the receipt and distribution of child pornography and moves  
 4 to suppress all statements that he made to Detective Ramirez during the interrogation. On July 7, 2015,  
 5 the court held an evidentiary hearing. (Mins. Proceedings #51). Detective Ramirez testified that he  
 6 Mirandized Mr. Humphries; but that he did so before turning the recorder on. (Tr. #54 at 40:7–10). He  
 7 also testified that he typically uses a *Miranda* card and waiver form; but he did not give Mr. Humphries a  
 8 copy of the card or ask him to sign a waiver. (*Id.* at 40:15–22). Detective Ramirez also testified that the  
 9 recording provides no indication that he “advised Mr. Humphries of his *Miranda* rights.” (*Id.* at 41:8–10).

10 Mr. Humphries testified to a different set of facts. He stated that Detective Ramirez isolated him  
 11 in the back bedroom and told him that *Miranda* does not apply to him when Mr. Humphries expressed  
 12 concern about speaking with Detective Ramirez without an attorney. He testified:

13 I asked him about my *Miranda* rights and he told me that I was not entitled to *Miranda*—  
 14 I was not under arrest and so therefore *Miranda* did not apply to me. [. . .] I told Detective  
 15 Ramirez, ‘I don’t think I should talk to you unless I have a lawyer present,’ and he said,  
 16 ‘Well, since *Miranda* does not apply to you, you’re not entitled to a lawyer.’

17 (*Id.* at 93:13–21).

18 On September 15, 2015, Mr. Humphries filed a letter with the court, complaining that Detective  
 19 Ramirez allegedly authored a report that has not been produced in discovery. (Doc. #65). His attorney  
 20 responded, saying that the letter was filed without his knowledge and that the government has fully  
 21 complied with its discovery obligations. This report and recommendation follows.

## 22 II. LEGAL STANDARD

23 The Fifth Amendment provides, “[n]o person . . . shall be compelled in any criminal case to be a  
 24 witness against himself.” U.S. CONST. amend. V. In *Miranda v. Arizona*, the Supreme Court held that the  
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1 Fifth Amendment requires law enforcement officials to advise a suspect of his right to remain silent and  
2 right to an attorney if the suspect is subjected to a custodial interrogation. 384 U.S. 436, 444 (1966).  
3 If law enforcement officials do not Mirandize a suspect during a custodial interrogation, the suspect's  
4 statements should be suppressed from the prosecutor's case in chief. *Id.* The government bears the burden  
5 of demonstrating compliance with *Miranda*. See 384 U.S. at 475; *Lego v. Twomey*, 404 U.S. 477, 489  
6 (1972); *Colorado v. Connelly*, 479 U.S. 157, 158, 168–69 (1986).

7 *Miranda* warnings are designed to neutralize interrogation practices that prevent a suspect from  
8 making “a free and rational choice” about speaking. *Missouri v. Seibert*, 542 U.S. 600, 608 (2004) (citing  
9 *Miranda*, 384 U.S. at 464–65). They achieve this goal by requiring the police to “adequately and  
10 effectively” advise suspects of the choices the Constitution guarantees. *Seibert*, 542 U.S. at 608 (citing  
11 *Miranda*, 384 U.S. at 467). “It is the premise of *Miranda* that the danger of coercion results from the  
12 interaction of custody and official interrogation.” *Illinois v. Perkins*, 496 U.S. 292 (1990). The concern is  
13 “psychologically rather than physically oriented” because the “the modern practice of in-custody  
14 interrogation” involves the application of mental coercion. *Miranda*, 384 U.S. at 448.

15  
16 In cases like this, where the suspect was not formally arrested or taken into police custody, the  
17 suspect is nevertheless considered “in custody” for *Miranda* purposes if he has been “deprived of his  
18 freedom of action in any significant way.” 384 U.S. at 444. Since *Miranda*, the Supreme Court has  
19 enunciated several general definitions of custody, but the ultimate inquiry is whether there was “a formal  
20 arrest or restraint on freedom of movement of the degree associated with a formal arrest.” *Thompson*  
21 *v. Keohane*, 516 U.S. 99, 112 (1995) (quotation marks and citations omitted); *Stansbury v. California*,  
22 511 U.S. 318, 322 (1994) (per curiam) (same).

23 The court engages in a three-step inquiry to determine whether a suspect was in custody. *J.D.B.*  
24 *v. N. Carolina*, 131 S. Ct. 2394, 2402 (2011) (citing *Keohane*, 516 U.S. at 112). First, the court examines  
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1 the totality of circumstances surrounding the interrogation. *J.D.B.*, 131 S. Ct. at 2402; *United States v.*  
2 *Craighead*, 539 F.3d 1073, 1082 (9th Cir. 2008). Second, the court considers whether a reasonable person  
3 in those circumstances would “have felt he or she was not at liberty to terminate the interrogation and  
4 leave.” *Craighead*, 539 F.3d at 1082 (citing *Keohane*, 516 U.S. at 112). Third, “[o]nce the scene is set and  
5 the players’ lines and actions are reconstructed,” the court determines whether there was a formal arrest  
6 or restraint on freedom of movement of the degree associated with formal arrest.” *J.D.B.*, 131 S. Ct.  
7 at 2402 (citing *Keohane*, 516 U.S. at 112). The inquiry focuses on the objective circumstances; the  
8 subjective beliefs held by the interrogating officers and the person being interrogated are not germane.  
9 *Stansbury*, 511 U.S. at 322.

10 In *Craighead*, the Ninth Circuit identified four factors that are specifically relevant to determining  
11 whether an in-home interrogation is custodial: (1) the number of law enforcement personnel and whether  
12 they were armed; (2) whether the suspect was at any point restrained, either by physical force or by threats;  
13 (3) whether the suspect was isolated from others; and (4) whether the suspect was informed that he was  
14 free to leave or terminate the interview, and the context in which any such statements were made. 539  
15 F.3d at 1084. Deciding whether an in-home interrogation was custodial “is necessarily fact intensive.” *Id.*  
16 (citing *United States v. Griffin*, 7 F.3d 1512, 1518 (10th Cir. 1993)).

### 18 III. DISCUSSION

19 Mr. Humphries’ motion presents two questions: (1) whether the government’s conduct during the  
20 search turned Mr. Humphries’ home into a custodial setting that required *Miranda* warnings and, if so,  
21 (2) whether Mr. Humphries was Mirandized?<sup>2</sup> Both are discussed below.

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25 <sup>2</sup> The parties do not dispute that Mr. Humphries was interrogated.

**A. Whether Mr. Humphries' Home was a Custodial Setting?**

Application of the Fifth Amendment to in-home interrogations “presents some analytical challenges.” *Craighead*, 539 F.3d at 1082. “The home occupies a special place in the pantheon of constitutional rights.” *Id.* at 1077. It is protected by the First Amendment, which prohibits the government from telling a person, sitting alone in his home, what he may read or watch. *Stanley v. Georgia*, 394 U.S. 557, 565 (1969). It is protected by the Second Amendment, which prohibits a federal “ban on handgun possession in the home.” *Dist. of Columbia v. Heller*, 554 U.S. 570, 128 (2008). It is protected by the Third Amendment, which forbids quartering soldiers “in any house” in time of peace “without the consent of the Owner.” U.S. CONST. amend. III. It is protected by the Fourth Amendment, which protects the home from unreasonable searches and seizures. U.S. CONST. amend. IV.

Under the Fifth Amendment, a suspect’s mere presence in his home during an interrogation is said to protect his freedom from the government’s imposition of countervailing pressures. Home is where one’s family resides, which provides moral support. *Miranda*, 384 U.S. at 450 (“[H]is family and other friends are nearby, their presence lending moral support.”); *Elstad*, 470 U.S. at 315 (“The initial conversation took place at midday, in the living room area of respondent’s own home, with his mother in the kitchen area, a few steps away.”); *United States v. Griffin*, 922 F.2d 1343, 1352 (8th Cir. 1990) (“A frequently recurring example of police domination concerns the removal of the suspect from the presence of family, friends, or colleagues who might lend moral support during the questioning and deter a suspect from making inculpatory statements.”).

Home is familiar and comfortable, which provides shelter from psychological coercion. *See Orozco v. Texas*, 394 U.S. 324, 326 (1969); *Craighead*, 539 F.3d at 1083, 1088; *United States v. Brown*, 441 F.3d 1330, 1346–47 (11th Cir. 2006) (“[C]ourts are *much less likely* to find the circumstances custodial when the interrogation occurs in familiar or at least neutral surroundings, such as



1 the suspect's home.") (emphasis original). These features generally insulate a suspect from police coercion  
2 by neutralizing the pressures that would arise if the interrogation were to occur at the police station.  
3 *Craighead*, 539 F.3d at 1083 (citing 2 WAYNE R. LAFAVE, CRIMINAL PROCEDURE § 6.6(e) (3d ed. 2007)).

4 But, the home's protective effects greatly diminish when the home is the object of government  
5 scrutiny. The government's legitimate law enforcement needs (i.e., evidence preservation and officer  
6 safety) require police officers to temporarily dominate a home when executing a search warrant. *Michigan*  
7 *v. Summers*, 452 U.S. 692, 702 (1981) ("Most obvious is the legitimate law enforcement interest in  
8 preventing flight in the event that incriminating evidence is found. Less obvious, but sometimes of greater  
9 importance, is the interest in minimizing the risk of harm to the officers."); *United States v. Williams*, 760  
10 F.3d 811, 815 (8th Cir. 2014) ("Searching investigators typically come armed and in groups of sufficient  
11 number to ensure officer safety."); *United States v. Perrin*, 659 F.3d 718, 721 (8th Cir. 2011) ("Any  
12 warrant search is inherently police dominated; there is nothing untoward about that circumstance.").

13 When such dominance is exerted to secure the home, the situation can be custodial. *United States*  
14 *v. Revels*, 510 F.3d 1269, 1275 (10th Cir. 2007) (finding an interview custodial that occurred when  
15 dominance was asserted to secure a home to execute a search warrant); *United States v. Kim*, 292 F.3d  
16 969, 977 (9th Cir. 2002) (finding an interview custodial that occurred when dominance was asserted to  
17 secure a store to execute a search warrant).

18 Even after the home is secured, the search compromises the home's protective effects.  
19 A government search upends familiar surroundings; and occupants may be separated for a short period of  
20 questioning. *See Revels*, 510 F.3d at 1275 (citations omitted). A reasonable person is not likely to find  
21 comfort or shelter from psychological pressure in his home when a neutral magistrate judge has  
22 determined that it should be intruded because its contents are suspicious. *See Kim*, 292 F.3d at 974 (being  
23 confronted with evidence of guilt may render an interrogation custodial); *United States v. Hayden*, 260  
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1 F.3d 1062, 1066 (9th Cir. 2001) (same); *Lowe v. United States*, 407 F.2d 1391, 1397 (9th Cir. 1969)  
2 (same); *see also United States v. Hashime*, 734 F.3d 278, 284 (4th Cir. 2013) (stating that the suspect and  
3 his family's loss of control over their home may render an interrogation custodial).

4 These objective circumstances place an occupant's Fifth Amendment rights in jeopardy. When  
5 police officers execute a search warrant in the home, there is a legitimate law enforcement need to  
6 dominate the home and temporarily detain and interrogate the occupants. *Summers*, 452 U.S. at 703–05.  
7 However, the existence of a valid search warrant under the Fourth Amendment does not obviate an  
8 officer's obligations under the Fifth Amendment. *Revels*, 510 F.3d at 1275; *Kim*, 292 F.3d at 977. If the  
9 police execute a search warrant and turn the home into a custodial setting, then the occupants must be  
10 Mirandized. *See id.*

11 If the police execute a search warrant inside a home and tell the occupants that they are free to  
12 leave, where will he go? “To be ‘free’ to leave is a hollow right if the one place the suspect cannot go is  
13 his own home.” *Craighead*, 539 F.3d at 1083 (citing *United States v. Crawford*, 372 F.3d 1048, 1060 (9th  
14 Cir. 2004)). And if the occupants choose to stay, what will they do? Deduce that they should remain silent  
15 while unfamiliar government agents explain their presence, rummage through his belongings, scan their  
16 computers, and monitor their movements? This is unlikely. *See Summers*, 452 U.S. at 701–03; *Craighead*,  
17 539 F.3d at 1083. The presence of a valid search warrant increases the probability that a reasonable  
18 occupant will make incriminating statements, especially if the occupant participates in the search. The  
19 decision not to Mirandize under these circumstances creates a hazardous grey zone.

20  
21 No circuit court has held that an occupant must be Mirandized as a matter of course when the  
22 police execute a search warrant in the home. *See, e.g., Williams*, 760 F.3d at 815 (stating that no bright-  
23 line rule exists); *Revels*, 510 F.3d at 1275 (stating that the inquiries under the Fourth and Fifth Amendment  
24 are separate); *Kim*, 292 F.3d at 977 (same). The First and Ninth Circuits have determined that the best  
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1 practice is to Mirandize the occupants and provide the prophylactic as they adjust to the psychological  
 2 shock of the intrusion or postpone the interrogation until a non-custodial moment. *See Craighead*, 539  
 3 F.3d at 1086 (quoting *United States v. Mittel-Carey*, 493 F.3d 36, 40 (1st Cir. 2007)). This balances the  
 4 suspect's "constitutional rights and the government's legitimate law enforcement needs." 493 F.3d at 40.  
 5 And it produces an efficient result by obviating the court's fact-intensive determination of whether an in-  
 6 home interrogation was, at some point, custodial. If best practices are not followed, the government  
 7 gambles with the occupants' constitutional rights and the possibility that evidence will be excluded at trial.

8 The government gambled here. It executed a search warrant in Mr. Humphries' home, failed to  
 9 document the *Miranda* warnings Detective Ramirez testified were given, and created a police-dominated  
 10 atmosphere that restrained Mr. Humphries' freedom of movement to the same degree associated with a  
 11 formal arrest. The court's finding that Mr. Humphries' home was police dominated is supported by  
 12 Detective Ramirez's testimony. On direct examination, he demonstrated that the situation was custodial  
 13 because the family was detained on the couch and prohibited from moving:  
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15 Q. Do you allow people to go all over your search location that are not law  
 16 enforcement while you're doing a search?

17 A. No.

18 Q. Is it fair to say that you provide an area for them, if they wish to stay, that  
 19 they can stay within?

20 A. Yes.

21 Q. [Where?]

22 A. [T]heir living room couch. . . .

23 (Tr. #54 at 28:24–29:2). This constitutes custody. A person is considered "in custody" for *Miranda*  
 24 purposes if the person has been "deprived of his freedom of action in any significant way." *Craighead*,  
 25 539 F.3d at 1082 (citing *Miranda*, 384 U.S. at 444). Here, Metro expressly confined the family to a  
 disheveled couch. *See (id.)* They were allegedly told that they were free to leave; but "[t]o be 'free' to

1 leave is a hollow right if the one place the suspect cannot go is his own home.” 539 F.3d at 1083 (citation  
2 omitted).

3 Detective Ramirez’s testimony provides a sufficient basis to conclude that the setting was custodial  
4 and required *Miranda* warnings. This finding is also supported by the four *Craighead* factors. Each is  
5 addressed below.

6 1. The First *Craighead* Factor

7 The court first considers “the number of law enforcement personnel and whether they were  
8 armed.” 539 F.3d at 1084. This factor strongly favors Mr. Humphries. When the operation was  
9 commenced, there were two armored vehicles, a K-9 unit, 16 armored officers carrying riot shields, two  
10 detectives from the Las Vegas Metropolitan Police Department, a forensic analyst, an investigative  
11 specialist, a sergeant, and an ambulance. (Tr. #54 at 16:6–14; 27:23 –25). When Mr. Humphries exited  
12 the home, he saw “an M-16 or AR-15” at him. (*Id.* at 88:15). When Peggy exited, she saw guns pointed  
13 at her. (*Id.* at 72:20). Metro S.W.A.T. Officer James Bonkavich testified that the S.W.A.T. officers wore  
14 ballistic helmets and flack jackets and carried various weapons, including rifles, handguns, riot shields,  
15 and low lethality weapons. (*Id.* at 17:10–11).  
16

17 The government asserts that this factor weighs in its favor because the number of law enforcement  
18 personnel decreased when the search was executed.<sup>3</sup> The court disagrees. It is improper as a matter of law  
19 to treat the S.W.A.T. team’s operation as something separate from the search. The Supreme Court directs  
20 lower courts to examine “the totality of circumstances surrounding the interrogation,” *see J.D.B.*, 131 S.  
21 Ct. at 2402, not the immediate circumstances surrounding the interrogation. Additionally, it would be  
22 unreasonable to treat the S.W.A.T. team’s actions as separate from the conduct of the searching officers.  
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25 <sup>3</sup> When the search was commenced, there were two detectives from the Las Vegas Metropolitan Police Department,  
a forensic analyst, an investigative specialist, a sergeant. (Tr. #54 at 27:23–25).

1 A reasonable person would view the operation as a single event and would be under the psychological  
2 effect of the S.W.A.T. team's show of force long after the team had departed.

3 Even if the court were to view the in-home search as an isolated event, the court would still find  
4 that the circumstances were custodial. In *Craighead*, the Ninth Circuit stated that "when the number of  
5 law enforcement personnel far outnumber the suspect, the suspect may reasonably believe that, should he  
6 attempt to leave, he will be stopped by one of the many officers he will encounter on the way out." 539  
7 at 1084–85. Here, Mr. Humphries testified that he believed he would have been stopped if he had  
8 attempted to leave because "at all times there was an officer between me and every door, except for the  
9 sliding glass door. When we went into the bedroom to talk, Ramirez instructed me to sit on the end of the  
10 couch – or bed and he stood between me and the door." (*Id.* at 94:11–15).

11 These circumstances parallel *Craighead*. There, Mr. Craighead was taken into a backroom for  
12 questioning where a detective appeared "to be leaning with his back to the door in such a way as to block  
13 Craighead's exit from the room." 539 F.3d at 1086. The detective wore a flack jacket or raid vest, and was  
14 visibly armed. So too here. Mr. Humphries was taken into a back bedroom and Detective Ramirez blocked  
15 his exit while wearing a bright yellow S.W.A.T. jacket and a gun.

## 16 2. The Second *Craighead* Factor

17 Second, the court considers "whether [Mr. Humphries] was at any point restrained, either by  
18 physical force or by threats." *Craighead*, 539 F.3d at 1084. This factor also favors Mr. Humphries.

19 Actual restraint is not required to find that a person is in custody for *Miranda* purposes.  
20 See *Orozco*, 394 U.S. at 325, 327 (finding custody where four officers entered the suspect's bedroom and  
21 acted as though he was "not free to leave," but did not actually handcuff or physically subdue the suspect).  
22 In *Craighead*, the court determined that a suspect was restrained where (1) he "was not handcuffed or  
23 physically restrained," (2) he "was escorted to a back storage room and the door was closed behind him,"  
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1 (3) a detective appeared to be blocking the suspect's exit from the room, (4) the detective was armed and  
2 wearing a flack jacket, and (5) the suspected testified that he was not free to leave. 539 F.3d at 1086.

3 Each of these facts are present here. Although Mr. Humphries was restrained at the beginning of  
4 the search, his zip ties were removed when he was interrogated. Like *Craighead*, Mr. Humphries was  
5 escorted to a back room and his exit was blocked. Like the detective in *Craighead*, Detective Ramirez  
6 wore a bright yellow S.W.A.T. jacket and a gun and blocked Mr. Humphries' exit with his body. Also like  
7 *Craighead*, Mr. Humphries testified that he did not feel free to leave:

8 Q. Did you feel that you were free to get up and leave during this search of your place?

9 A. Not at all.

10 (Tr. #54 at 94:20–22).

11 Additionally, the totality of the circumstances demonstrates that Metro's actions created objective  
12 circumstances that would lead a reasonable person to believe that Mr. Humphries was restrained. Metro  
13 descended on his home with two armored vehicles, a K-9 unit, 16 armored officers, two detectives from  
14 Metro, a forensic analyst, an investigative specialist, a sergeant, and an ambulance. (*Id.* at 16; 27:23 –25).  
15 That Metro's conduct restrained Mr. Humphries is further supported by the fact that neither Peggy, Alyssa,  
16 nor Mr. Humphries left with Nala when a relative came to retrieve her.

18 3. The Third *Craighead* Factor

19 The court next considers whether Mr. Humphries was isolated from others. *Craighead*, 539 F.3d  
20 at 1084. This factor strongly favors Mr. Humphries.

21 It is well settled that separating a suspect from his family for questioning is a custodial-type  
22 restraint. *See Miranda*, 384 U.S. at 450 (quoting a manual on police interrogation stating that the presence  
23 of family lends the suspect moral support and inhibits the officer's psychological advantage); *Elstad*, 470  
24 U.S. at 315 (finding an interrogation noncustodial because a family member was in the next room); *Griffin*,  
25

1 922 F.2d at 1352 (“A frequently recurring example of police domination concerns the removal of the  
2 suspect from the presence of family, friends, or colleagues who might lend moral support during the  
3 questioning and deter a suspect from making inculpatory statements.”).

4 It is equally well settled that a custodial setting is more likely to be found when the police remove  
5 and isolate a suspect from the room of his or her choosing. In *Miranda*, the Supreme Court cited a police  
6 manual that instructed officers how to establish a custodial setting that would likely induce incriminating  
7 statements: “[i]f at all practicable, the interrogation should take place in the investigator’s office or *at least*  
8 *in a room of his own choice.*” 384 U.S. at 449 (citing INBAU & REID, CRIMINAL INTERROGATION AND  
9 CONFESSIONS 99 (1962)) (emphasis added).

10 Here, Detective Ramirez isolated Mr. Mr. Humphries from his family and deprived him of the  
11 room of his own choosing. All of the witnesses testified that Mr. Humphries wanted to stay in the living  
12 room with his family but Detective Ramirez rejected Mr. Humphries express desire and insisted that he  
13 be isolated from his wife and daughter in the bedroom. *See, e.g.*, (Tr. #54 at 93:5–7). By isolating him  
14 from his family, Detective Ramirez eliminated the moral support that is crucial to a suspect’s ability to  
15 withstand coercion. *See Craighead*, 539 F.3d at 1087 (citing *Miranda*, 384 U.S. at 445–46) (“[T]he  
16 Supreme Court was explicit that the law enforcement technique of isolating the suspect from family and  
17 friends is one of the distinguishing features of a custodial interrogation.”).

18  
19 4. The Fourth *Craighead* Factor

20 Fourth, the court considers “whether [Mr. Humphries] was informed that he was free to leave or  
21 terminate the interview, and the context in which any such statements were made.” *Craighead*, 539 F.3d  
22 at 1084. “If a law enforcement officer informs the suspect that he is not under arrest, that statements are  
23 voluntary, and that he is free to leave at any time, this communication greatly reduces the chance that a  
24 suspect will reasonably believe he is in custody.” *Id.* at 1089 (citing *Griffin*, 922 F.2d at 1349). However,  
25

1 the mere recitation of the statement that the suspect is free to leave does not render an interrogation non-  
2 custodial *per se*.” *Id.* The court “must consider the delivery of these statements within the context of the  
3 scene as a whole.” *Id.* (citing *United States v. Lee*, 699 F.2d 466, 467–68 (9th Cir. 1982) (per curiam)).

4 Here, Detective Ramirez testified that he told Mr. Humphries that he was free to leave; but the  
5 context of the statement demonstrates that Mr. Humphries was not free to leave. Detective Ramirez told  
6 Mr. Humphries that he was free to leave immediately after the S.W.A.T. team demonstrated an impressive  
7 show of force that involved two armored vehicles, a K-9 unit, 16 armored officers, two detectives from  
8 the Las Vegas Metropolitan Police Department, a forensic analyst, an investigative specialist, a sergeant,  
9 an ambulance, and guns that were pointed at him and his wife. A reasonable person would not believe that  
10 he or she is free to leave in light of the overwhelming power that was exerted over Mr. Humphries, his  
11 family, and his home.

12 The officers’ positions within the home also demonstrate that the context of the statement was  
13 custodial. Mr. Humphries testified that he was surrounded by police officers who blocked every exit: “at  
14 all times there was an officer between me and every door, except for the sliding glass door. When we went  
15 into the bedroom to talk, Ramirez instructed me to sit on the end of the couch – or bed and he stood  
16 between me and the door.” (*Id.* at 94:11–15). Detective Ramirez’s statement that Mr. Humphries was free  
17 to leave was insufficient to counteract the objective custodial circumstances within which the statements  
18 was uttered.

19  
20 Third, the combination of the heat and Peggy’s medical condition created a custodial context.  
21 Everyone testified that it was at least 110 degrees outside. *See* (Ramirez Test. #54 at 25:15) (“It had to be  
22 at least 110.”). Mr. Humphries shirt was wet with sweat, *see* (*id.* at 31:1), and Peggy testified that she was  
23 medically unable to leave the apartment because of the heat, *see* (*id.* at 46:1–5; 77:22–25). These facts  
24 provided Detective Ramirez with actual knowledge that Mr. Humphries could not leave his home.  
25



**B. Whether Mr. Humphries was Mirandized?**

Because the court finds that Mr. Humphries was in custody, it must consider a second question: whether Detective Ramirez Mirandized him when he took Mr. Humphries into the bedroom for an interrogation? The court finds that the government failed to satisfy its burden showing that Mr. Humphries was Mirandized.

Other than Detective Ramirez’s testimony, there is no evidence Mr. Humphries was Mirandized. During the court’s evidentiary hearing, Detective Ramirez testified that he Mirandized Mr. Humphries; but he also stated that he did so before he decided to record Mr. Humphries’ incriminating statements. *See* (Tr. #54 at 40:7–10). Detective Ramirez also stated that he typically uses a *Miranda* card and waiver form, but he did not give Mr. Humphries a copy of the card or ask him to sign a waiver in this case. (*Id.* at 40:15–22). On cross examination, Detective Ramirez conceded that the recording contains no indication that he “advised Mr. Humphries of his *Miranda* rights.” (*Id.* at 41:8–10). In direct contradiction to Detective Ramirez’s testimony, Mr. Humphries testified that he was not Mirandized:

I asked him about my *Miranda* rights and he told me that I was not entitled to *Miranda*—I was not under arrest and so therefore *Miranda* did not apply to me. [. . .] I told Detective Ramirez, ‘I don’t think I should talk to you unless I have a lawyer present,’ and he said, ‘Well, since *Miranda* does not apply to you, you’re not entitled to a lawyer.’ (*Id.* at 93:13–21).

The court finds Mr. Humphries’ testimony on this point more credible than Detective Ramirez’s testimony. A police detective interrogates suspects as a regular job activity. Confusing details of successive interviews is a real possibility. For this reason, officers typically record *Miranda* warnings if recording equipment is available (as was the case here), or at a minimum, have the suspect sign a card acknowledging that he received the *Miranda* warnings.

1 Mr. Humphries description of his discussion about *Miranda* rights as they were entering the  
2 bedroom was highly credible. There is no doubt that Mr. Humphries' experience that day was anything  
3 but routine. The court finds that Mr. Humphries accurately testified regarding what was said by Detective  
4 Ramirez and Mr. Humphries regarding *Miranda* warnings on August 30, 2012.

5 The circumstances of Mr. Humphries' interrogation show that Detective Ramirez had every  
6 opportunity to memorialize whether he Mirandized Mr. Humphries. The circumstances were not  
7 emergent; Detective Ramirez is not inexperienced; Mr. Humphries was not a flight risk; and Detective  
8 Ramirez was not without support staff. However, the government provided no explanation for Detective  
9 Ramirez's failure to document his version of the facts. Under these circumstances, the court finds that the  
10 government failed to meet its burden of demonstrating compliance with *Miranda*.<sup>4</sup>

11 Therefore, the court recommends granting Mr. Humphries' Motion to Suppress and excluding his  
12 statements from the government's case in chief. *See Miranda*, 384 U.S. at ("[T]he prosecution may not  
13 use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the  
14 defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against  
15 self-incrimination."); *Harris v. New York*, 401 U.S. 222 (1971) (holding that confessions obtained in  
16 violation of *Miranda* may be used for impeachment purposes).

17  
18 ACCORDINGLY, and for good cause shown,

19 IT IS RECOMMENDED that Mr. Humphries' Motion to Suppress (#39) be GRANTED.

20 IT IS ORDERED that Mr. Humphries' Letter (#65) is STRICKEN. *See* LR IA 10-6(a) ("A party  
21 who has appeared by attorney cannot while so represented appear or act in the case.").

22  
23  
24  
25 <sup>4</sup> Because Mr. Humphries was subjected to a custodial interrogation and was not *Mirandized*, the court does not reach the question of whether or not he invoked his right to counsel.

DATED this 24th day of September, 2015.



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CAM FERENBACH  
UNITED STATES MAGISTRATE JUDGE